

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Motor Vehicle Dealer and  
3 Sales Finance Company License of:

4 **SUNTECH MOTORS, LLC**  
5 1365 West Broadway Road  
6 Mesa, Arizona 85202

Petitioner.

No. 08F-BD070-BNK

NOTICE OF HEARING

RECEIVED

JUL 10 2008

O.A.H.

7 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137,  
8 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of  
9 Administrative Hearings, an independent agency, and is scheduled for August 15, 2008, at 1:30 p.m.,  
10 at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona,  
11 (602) 542-9826 (the "Hearing").

12 The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order  
13 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to  
14 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
15 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
16 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the  
17 suspension or revocation of Petitioner's license pursuant to A.R.S. § 44-283; and (4) an order or any  
18 other remedy necessary or proper for the enforcement of statutes and rules regulating motor vehicle  
19 dealers and sales finance companies pursuant to A.R.S. §§ 6-123 and 6-131.

20 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of  
21 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied  
22 or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to  
23 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the  
24 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office  
25 of Administrative Hearings has designated Lewis D. Kowal, at the address and phone number listed  
26 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona

1 Administrative Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08,  
2 the Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing,  
3 final decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative  
4 Law Judge is specifically prohibited from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**  
6 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue  
7 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of  
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by  
10 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable  
11 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence  
12 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative  
13 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.  
14 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be  
16 made by a court reporter or by electronic means. Any party that requests a transcript of the  
17 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

18 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant  
19 Attorney General Erin Gallagher, (602) 542-8935, 1275 West Washington, Phoenix, Arizona 85007.

#### 20 **NOTICE OF APPLICABLE RULES**

21 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")  
22 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting  
23 forth the rules of practice and procedure applicable in contested cases and appealable agency actions  
24 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules  
25 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through  
26 R2-19-122. A copy of these rules is enclosed.

1 Pursuant to A.A.C. R20-4-1209, Petitioner shall file a written answer **within twenty (20)**  
2 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioner's position  
3 or defense and shall specifically admit or deny each of the assertions contained in this Notice of  
4 Hearing. If the answering Petitioner is without or is unable to reasonably obtain knowledge or  
5 information sufficient to form a belief as to the truth of an assertion, Petitioner shall so state, which  
6 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioner  
7 intends to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioner  
8 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised  
9 in the answer is deemed waived.

10 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioner will be**  
11 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as  
12 true and admitted and the Superintendent may take whatever action is appropriate, including issuing  
13 an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating  
14 motor vehicle dealers and sales finance companies in Arizona pursuant to A.R.S. §§ 6-123 and 6-  
15 131, and imposing a civil money penalty pursuant to A.R.S. § 6-132.

16 Petitioner's answer shall be mailed or delivered to the Arizona Department of Financial  
17 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or  
18 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,  
19 Arizona 85007 and to Assistant Attorney General Erin Gallagher, Consumer Protection & Advocacy  
20 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

21 **Persons with disabilities may request reasonable accommodations such as interpreters,**  
22 **alternative format or assistance with physical accessibility.** Requests for accommodations must  
23 be made as early as possible to allow time to arrange the accommodations. If accommodations are  
24 required, call the Office of Administrative Hearings at (602) 542-9826.

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26 ...

1 FACTS

2 1. Petitioner Suntech Motors, LLC ("Suntech") is an Arizona limited liability company  
3 that is authorized to transact business in Arizona as a motor vehicle dealer and sales finance  
4 company, license numbers MVD 0908737 and SF 0908738, within the meaning of A.R.S. §§ 44-  
5 281, *et seq.*

6 2. Suntech is not exempt from licensure as a motor vehicle dealer or sales finance  
7 company within the meaning of A.R.S. § 44-282(G).

8 3. The Department records show the ownership of Suntech to be Kenneth J. Melville,  
9 100%.

10 4. On September 22, 2006, the Department received two signed and notarized Sales  
11 Finance/Motor Vehicle Dealer Applications ("Applications"). The Applications were for sales  
12 finance company license #0908738 and motor vehicle dealer license #0908737. The Applications  
13 were signed by Kenneth Joel Melville, President, on September 22, 2006. Question number six (6)  
14 of the Applications lists Kenny Melville as the President and 100% owner.

15 5. On June 22, 2007, the Department received two (2) signed and notarized Sales  
16 Finance/Motor Vehicle Dealer License Renewal Applications for Year July 1, 2007 through June 30,  
17 2008 ("Renewals"). The Renewals were for sales finance company license #0908738 and motor  
18 vehicle dealer license #0908737. The Renewals were signed by Heraclio E. Gonzalez, Principal, on  
19 June 20, 2007. Question number nine (9) of the Renewals lists Heraclio E. Gonzalez as the Principal  
20 and 100% owner.

21 6. On October 2, 2007, Laurie Feldmann ("Ms. Feldmann"), customer service  
22 representative for the Department, telephoned Suntech and asked for the owner. Ms. Feldmann was  
23 told the owner was not available. Ms. Feldmann informed the gentleman on the phone that the  
24 Department required documentation regarding a change of control. Ms. Feldmann was told that  
25 Suntech would fax to the Department the required documentation.

26 7. On February 28, 2008, Ms. Feldmann called Suntech and left a message indicating

1 that the Department had not received any of the documentation requested on October 22, 2007.

2 8. On February 29, 2008, Ms. Feldmann mailed to Suntech a fingerprint card and a  
3 personal history statement to be completed by Heraclio E. Gonzalez.

4 9. On March 12, 2008, Ms. Feldmann mailed a letter to Suntech requesting  
5 documentation from Suntech to show the ownership of Suntech had changed from Kenneth J.  
6 Melville to Heraclio E. Gonzalez and for Heraclio E. Gonzalez to complete and return to the  
7 Department a fingerprint card and personal history statement.

8 10. On April 11, 2008, the Department received a fingerprint card and personal history  
9 statement from Heraclio E. Gonzalez.

10 11. On April 17, 2008, the Department obtained a copy of the Article of Amendment for  
11 Suntech that was filed with the Arizona Corporation Commission in August 2007 removing Maria  
12 Gonzalez and Kenny Melville as members of Suntech.

13 12. Based upon the above findings, the Department issued and served upon Suntech a  
14 Notice of Assessment on June 2, 2008.

15 13. On June 23, 2008, Petitioner filed a letter to appeal the Notice of Assessment.

### 16 LAW

17 1. Pursuant to Title 6 and Title 44, Chapter 2.1 of the Arizona Revised Statutes, the  
18 Superintendent has the authority and the duty to regulate all persons engaged in the motor vehicle  
19 dealer and sales finance company businesses and with the enforcement of statutes, rules, and  
20 regulations relating to motor vehicle dealers and sales finance companies.

21 2. By the conduct set forth in the Complaint, Suntech Motors, LLC has violated the  
22 motor vehicle dealer and sales finance company statutes and rules as follows:

23 a. A.R.S. § 44-282(F), by transferring or assigning control of Suntech without  
24 prior written consent of the Superintendent; and

25 b. A.R.S. § 6-124(C), by failing to provide documentation to the Department  
26 upon request of the Department as part of an investigation into a transaction

1 that violated A.R.S. § 44-282(F).


2 3. Suntech does not meet any of the exemptions to the licensing requirements set forth  
3 in A.R.S. § 44-282(G).

4 4. The violations, set forth above, constitute grounds for: (1) the issuance of an order  
5 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to  
6 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
7 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
8 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the  
9 suspension or revocation of Petitioner's license pursuant to A.R.S. § 44-283; and (4) an order or any  
10 other remedy necessary or proper for the enforcement of statutes and rules regulating motor vehicle  
11 dealers and sales finance companies pursuant to A.R.S. §§ 6-123 and 6-131.

12 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the  
13 above-described violations, the Superintendent may issue a cease and desist order pursuant to A.R.S.  
14 § 6-137; affirm the June 2, 2008, Notice of Assessment; suspend or revoke Petitioner's license  
15 pursuant to A.R.S. § 44-283; or impose a civil money penalty pursuant to A.R.S. § 6-132; and order  
16 any other remedy necessary or proper for the enforcement of statutes and rules regulating motor  
17 vehicle dealers and sales finance companies pursuant to A.R.S. §§ 6-123 and 6-131.

18 DATED this 16 day of July, 2008.

19 Felecia A. Rotellini  
20 Superintendent of Financial Institutions

21 By   
22 Robert D. Charlton  
23 Assistant Superintendent  
24  
25  
26

1 ORIGINAL of the foregoing filed this 10<sup>th</sup>  
2 day of July, 2008, in the office of:

3 Felecia A. Rotellini, Superintendent of Financial Institutions  
4 Arizona Department of Financial Institutions  
5 ATTN: Susan Longo  
6 2910 N. 44th Street, Suite 310  
7 Phoenix, AZ 85018

8 COPY mailed same date to:

9 Lewis D. Kowal, Administrative Law Judge  
10 Office of the Administrative Hearings  
11 1400 West Washington, Suite 101  
12 Phoenix, AZ 85007

13 Erin O. Gallagher, Assistant Attorney General  
14 Office of the Attorney General  
15 1275 West Washington  
16 Phoenix, AZ 85007

17 Richard Fergus, Division Manager  
18 Robert D. Charlton, Assistant Superintendent  
19 Arizona Department of Financial Institutions  
20 2910 N. 44th Street, Suite 310  
21 Phoenix, AZ 85018

22 AND COPY MAILED SAME DATE by  
23 Certified Mail, Return Receipt Requested, to:

24 Suntech Motors, LLC  
25 Attn: Heraclio E. Gonzalez, Owner  
26 1365 W. Broadway Rd.  
Mesa, AZ 85202

Javier Gonzalez, Statutory Agent for:  
Suntech Motors, LLC  
1365 W. Broadway  
Mesa, AZ 85202

  
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